

NOT FOR PUBLICATION

NO. 24649

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

NEDRIC ROBINSON KAPIKA, Petitioner-Appellant, v.
STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(SPP NO. 94-03)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting C.J., Lim and Foley, JJ.)

Nedric Robinson Kapika (Kapika) appeals the October 2, 2001 decision and order of the circuit court of the third circuit, the Honorable Greg K. Nakamura, judge presiding. The court's decision and order denied Kapika's October 26, 1994 petition for post-conviction relief, which he brought under Hawai'i Rules of Penal Procedure (HRPP) Rule 40 (1994) (the Rule 40 petition). The court's decision and order also granted in part and denied in part Kapika's December 1, 2000 motion to amend his Rule 40 petition.

After a sedulous review of the record and the briefs submitted by the parties, and giving due consideration to the arguments advanced and the issues raised by the parties, we resolve Kapika's points of error as follows:

1. HRPP Rule 40 proceedings were "not . . . available and relief thereunder [could] not be granted" because the issues Kapika sought and was allowed to raise in or in connection with

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his Rule 40 petition were "previously ruled upon or were waived." HRPP Rule 40(a)(3) (1994). See also Adams v. State, 103 Hawai'i 214, 220, 81 P.3d 394, 400 (2003); Stanley v. State, 76 Hawai'i 446, 450-51, 879 P.2d 551, 555-56 (1994).

2. Kapika does not specify or argue error in the court's October 2, 2001 decision and order, insofar as the court denied in part and granted in part Kapika's December 1, 2000 motion to amend his Rule 40 petition. Hence, we will not consider that part of the court's decision and order. See Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(4); Wright v. Chatman, 2 Haw. App. 74, 76-77, 625 P.2d 1060, 1062 (1981); HRAP Rule 28(b)(7); Weinberg v. Mauch, 78 Hawai'i 40, 49, 890 P.2d 277, 286 (1995); In re Wai'ola O Moloka'i, Inc., 103 Hawai'i 401, 438 n.33, 83 P.3d 664, 701 n.33 (2004).

Therefore,

IT IS HEREBY ORDERED that the October 2, 2001 decision and order of the court is affirmed.

DATED: Honolulu, Hawai'i, March 30, 2004.

On the briefs:

Harry Eliason, for
petitioner-appellant.

Acting Chief Judge

Diane A. Noda and
Leslie S. Chow, Deputy
Prosecuting Attorneys,
County of Hawai'i, for
respondent-appellee.

Associate Judge

Associate Judge